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Intervention of ICRC regarding article 10, paragraph 5, of the draft comprehensive convention on international terrorism
14 February 2001

Mr. Chairman, thank you for giving the International Committee of the Red Cross (ICRC) the floor.

ICRC has for the past several years followed with great interest the elaboration of instruments aimed at suppressing various acts of terrorism, notably because some of these instruments touch upon international humanitarian law, of which ICRC has the privilege to be a promoter and guardian. We are grateful for having this opportunity to share some observations in this forum on the subject before us. We hope that our remarks on draft article 10, paragraph 5, can contribute to clarify the parameters for ICRC's visits to detained persons in various contexts and serve to underline that our involvement remains motivated solely by humanitarian considerations.

It may first be noted that ICRC has a long-standing practice of visiting persons deprived of their liberty, and that this role has been recognized by the international community on several occasions.

We do not intend to dwell here on the numerous provisions of international humanitarian law which confer a role in this regard to ICRC, notably because the draft convention, rightly, does not affect the rights and obligations under that legal regime. It may be recalled in this regard that within the scope of international humanitarian law, terrorism and terrorist acts are already squarely prohibited, both in situations of international and non-international armed conflicts. A few specific provisions may be briefly mentioned however, because they highlight two issues

which may be relevant to the text before us: the mandate of ICRC with respect to persons deprived of their liberty, and the lack of effect of our visits on the status of the persons or groups concerned.

As regards the mandate of ICRC, international humanitarian law gives ICRC a broad "right of initiative" in situations of armed conflict. Concerning international armed conflicts, this is recognized notably by the 1949 Geneva Conventions (First to Third Conventions, article 9, Fourth Convention, article 10). With respect to non-international armed conflicts, this can be seen in article 3 common to the four Geneva Conventions, which states: "An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict".

ICRC has also been given a similar right outside situations of armed conflict, typically in situations of internal disturbances and tensions. This "right of initiative" is based in particular on the statutes of the International Red Cross and Red Crescent Movement. Those statutes were adopted, by consensus, by States Parties to the Geneva Conventions and the components of the Movement during the 25th International Conference of the Red Cross in Geneva in 1986.

Article 5, paragraph 2 of the statutes reads as follows:

> "The role of the International Committee, in accordance with its Statutes, is in particular: ...
>
> (d) to endeavour at all times — as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife — to ensure the protection of and assistance to military and civilian victims of such events and of their direct results;".

Moreover, article 5, paragraph 3 of the statutes provides that:

> "The International Committee may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary, and may consider any question requiring examination by such an institution".

Thus, in the event of internal disturbances and tension, and in any other situation which warrants humanitarian action, ICRC has a right of humanitarian initiative, which is recognized in the statutes of the Movement and allows it to offer its services without that offer constituting interference in the internal affairs of the State concerned.

As regards the consequences of our visits on the status of those concerned, common article 3 further states that "The application of the preceding provisions shall not affect the legal status of the Parties to the conflict". As we know, this clause has been regarded as essential by many States, and makes it clear that the object of the Conventions is a purely humanitarian one, in no way concerned with the internal affairs of States. Similarly, because ICRC's involvement with detainees outside situations of armed conflict is purely based on humanitarian concerns, it also follows that our visits do not affect the legal status of the persons or groups in question. To illustrate the scope of our activities on behalf of detained persons, it may be mentioned that between January and the end of September 2000, ICRC delegates visited more than 202,000 prisoners and detainees in 68 countries.

Mr. Chairman, we would like now to turn more specifically to the draft before us. In context, the draft convention indicates (in article 6) that several States may have the duty or possibility to establish their jurisdiction over the offences referred to in article 2. Draft article 10 further lists several rights of the alleged offender, including that he/she be entitled to communicate with, and be visited by, a representative of the State which is entitled to protect that person's rights.

Draft paragraph 5 of article 10 mentions the right of States Parties having a claim to jurisdiction to invite ICRC to communicate with and visit the alleged offender. We would welcome such a reference, as visits to persons detained in relation with situations of violence are part of the traditional activities of ICRC. It may further be noted that draft paragraph 5 is not a novelty under international law, since provisions with a very similar wording can be found in the following instruments:

(a) International Convention against the Taking of Hostages, of 1979 (in art. 6, para. 5);

(b) International Convention against the Recruitment, Use, Financing and Training of Mercenaries, of 1989 (in art. 10, para. 4);

(c) International Convention for the Suppression of Terrorist Bombings, of 1997 (in art. 7, para. 5);

(d) International Convention for the Suppression of the Financing of Terrorism, of 1999 (in art. 9, para. 5).

While these instruments are not constitutive of ICRC's right of initiative, they can clearly be seen as a recognition of this right.

Mr. Chairman, without prejudging the response of ICRC in the event that an invitation were to be made in the future for ICRC to visit and communicate with an alleged offender under the convention, the following factors would typically be of relevance to ICRC when considering making such visits:

(a) ICRC must retain the freedom to accept or refuse an invitation, it being clearly understood that such ICRC visits would hinge on the agreement of both the detaining State and of the detainee;

(b) ICRC would in principle agree to make visits only if the detainee could not receive visits by his/her State representative;

(c) ICRC would conduct such visits independently as a humanitarian institution and neutral intermediary, and not on behalf of the requesting State;

(d) ICRC visits would be conducted according to standard ICRC criteria in order to be effective. ICRC must in particular be allowed to interview detainees in private, without witnesses, and must be able to repeat the visit.

Finally, Mr. Chairman, we would like to express our readiness to participate in future discussions on other relevant aspects of the draft convention, including those concerning the relationship between the draft convention and international humanitarian law.

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Statement by the Observer from the International Civil Aviation Organization to the fifth session of the Ad Hoc Committee established by General Assembly resolution 51/210

I wish to express the thanks of the International Civil Aviation Organization (ICAO) for the opportunity to present its views on the draft comprehensive convention on international terrorism. ICAO is particularly interested in the relationship between the draft comprehensive convention and the earlier specific legal instruments, more specifically the aviation security treaties.

ICAO currently comprises 186 Member States. The safety and security of international civil aviation are overriding objectives of ICAO, principles entrenched in its constitution, the Convention on International Civil Aviation, adopted on 7 December 1944 in Chicago.

Civil aviation has historically provided a highly visible and popular target for terrorists, indeed the first international legal instruments to combat terrorism were adopted under ICAO auspices, in 1963. In all, five instruments have been adopted. These conventions are listed in the first preambular paragraph of the draft convention under consideration, namely:

- Convention on Offences and Certain Other Acts Committed on Board an Aircraft, signed at Tokyo on 14 September 1963;
- Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971;

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- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988;

- Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991.

ICAO's work in the field of aviation security encompasses not just the adoption of treaties, but also standards and recommended practices in annex 17 to the Chicago Convention, as well as related guidance material. During the period from 1970 to 1999, the total number of passengers carried on the world's airlines quadrupled, while aircraft traffic increased twofold. Nevertheless, this same time frame has seen a trend of progressively diminishing numbers of acts of unlawful interference against the safety of civil aviation and the number of persons killed as a result of such acts. For example, in 1970, there were 100 acts of unlawful interference reported to ICAO, on both domestic and international flights, with 92 persons killed as a result of such acts. In 1999, the corresponding figures were six acts with no deaths.

The five aviation security treaties adopted under ICAO auspices have been widely accepted. The Tokyo Convention has 170 parties, The Hague Convention 173, the Montreal Convention 175, its Protocol 106 and the most recent instrument, the Convention on the Marking of Plastic Explosives of 1991, 65 parties.

The ICAO aviation security treaties have been successful, whether gauged by the number of States parties to them, or by their contribution to decreasing the number of acts of unlawful interference against civil aircraft. The legal regime created by these instruments is well known and certain.

ICAO recognizes the evolution in legal thinking that has taken place since the adoption of these instruments, and welcomes, in particular, the activity of the United Nations in this area. In 1999, the Governing Body of ICAO, the Council, considered an analysis of the International Convention on Terrorist Bombings and also a comparison between that Convention and ICAO's aviation security international legal instruments. The Council requested that the Secretary-General circulate the analysis and comparison to all Member States. One conclusion of the analysis was that the United Nations convention would make a positive contribution to the combat against terrorism. ICAO similarly supports the thrust of the proposed draft comprehensive convention.

However, it also wishes to preserve the integrity of the existing treaties adopted under its auspices. They have served civil aviation well. In this regard, ICAO believes that the application of article 30, paragraphs 3 and 4, of the Vienna Convention on the Law of Treaties could result in legal uncertainties when applied to the relationship between these instruments and the draft convention under consideration. In particular, questions could arise as to whether the provisions of a particular aviation security legal instrument and the comprehensive convention are compatible or not. States may have difficulty in deciding which treaty or which provision of which treaty governs any given factual situation.

ICAO further takes note of paragraph 11 of the informal summary of the general discussion held in the Working Group in 2000, prepared by the Chairman, where it was observed that uncertainty could arise as to whether article 30 of the

Vienna Convention would apply, as there was room for disagreement on whether the draft convention and any of the existing treaties constituted treaties relating to the same subject matter.

ICAO is therefore pleased that the Working Group agreed to include in the final text of the draft convention a specific provision to govern the relationship issue and it would support any proposal that will preserve the existing legal regimes, while at the same time enabling offences outside their scope to be covered by the new convention. ICAO believes the benefits of both the old and the new regimes would be realized with the inclusion of such a provision.